

program by withdrawing the provider's certification. Termination is not for a specified period of time and absent provider application for certification, remains permanent. [Eff JUN 29 1992] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: HRS §346-14; 42 C.F.R. §431.10)

§17-1321-3 Providers' right to review. (a) A provider may request an administrative hearing following the department's administrative decision to do any one of the following:

- (1) Withhold, terminate, or suspend a provider's certification to participate in the medical assistance program;
- (2) Withhold payment of claims as a result of audit or investigation;
- (3) Recover money claimed to have been overpaid to the provider by medicaid; or
- (4) Impose remedies established in section 17-1370-35 for nursing facilities that do not meet the requirements of participation.

(b) Any notice of intent to do any of the actions specified in subsection (a) shall be sent to the provider by certified mail. The provider shall have thirty days from the date that notification is mailed to request in writing an administrative hearing. There shall be no required format for the provider's written request for an administrative hearing, though the provider must clearly state that the provider requests an administrative hearing. At the time the provider requests an administrative hearing, the provider shall include with the request all documents and written evidence that the provider wishes to be considered at the hearing. Where a provider makes a timely request for an administrative hearing, the provider shall not be terminated or suspended until the hearing has been held and a decision has been rendered.

(c) DHS may suspend or terminate a provider from the medicaid program for one or more of the following reasons:

- (1) Failure by the provider to maintain with DHS a signed agreement identifying the terms and conditions under which the provider may participate in the Hawaii medical assistance program;
- (2) Refusal or failure by the provider to make available at the provider's place of business or at an appropriate location, either during

normal business hours, or at the mutual convenience of the parties, immediate access to all records and all diagnostic devices required to be maintained by section 346-40(b), HRS;

- (3) Refusal or failure by a provider without reasonable justification to keep those adequate written records necessary to disclose fully the type and extent of health care, service,s or supplies provided to medicaid recipients as provided by section 346-40(a) and (c), HRS;
 - (4) Revocation or suspension of the provider's license, certification, authorization, or permit to practice or provide service in the provider's health care specialty by a state or federal government, court, or agency;
 - (5) Failure to maintain a current and valid license, certification, or permit to practice the provider's profession;
 - (6) Criminal complaint, indictment by grand jury, or information about or conviction of the provider by a state or federal court for an offense involving the provider's participation in the medicaid program. Criminal complaint, indictment, or information may remain the basis for a suspension or termination by the department even though the complaint, information, or indictment results in acquittal;
 - (7) Any fraud against the medicaid program or abuse of health care services as defined in this section;
 - (8) A determination by a peer review organization that the provider has failed to provide adequate quality services to medicaid recipients as judged against accepted medical community standards in Hawaii;
 - (9) Any intentional failure to repay overpayments made by the medicaid program to the provider; or
 - (10) Any effort by the provider to interfere with, hinder, or stop an investigation by any state or federal agency into fraud or abuse in the medicaid program.
- (d) During the period of time from the notice of suspension or termination until the department orders a decision after administrative hearing, payment on any claims of the provider requesting review shall, at the

health care administrator's discretion, be withheld pending the hearing officer's final determination. If the administrative hearing officer upholds suspension or termination, decides that the contested claim shall not be paid, or renders a decision denying the provider's appeal, then the provider claims for which payment was withheld shall not be paid. If, after the administrative hearing, the hearing officer overturns a provider's suspension or termination, decides that any contested claims shall be paid, or renders a favorable decision on the provider's appeal, then the provider claims for which payment was withheld shall be paid.

(e) A provider may request administrative hearing only after an administrative decision by the department against that provider. There shall be no right of hearing for class actions on the part of other providers and there shall be no right to administrative hearing for the purpose of obtaining advisory opinions. [Eff JUN 29 1992] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: HRS §§346-40, 346-14; 42 C.F.R. §§431.10, 455.13)

§17-1321-4 Limitation of the right to review. A provider shall not have a right to an administrative hearing if:

- (1) The provider fails to request in writing a fair hearing from the health care administrator of DHS within the time specified in section 17-1321-3(b);
- (2) The administrative action is one of suspension or termination, based upon a final administrative decision of a state or federal agency withdrawing the license, certification, authorization, or permit of the provider to practice or furnish the health care specialty for which the provider is certified under the Hawaii medical assistance program; or
- (3) The administrative action is for suspension or termination and is based upon a state or federal court conviction of the provider of an offense involving fraud or abuse relating to the medicaid program. [Eff JUN 29 1992] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: 42 C.F.R. §§431.10, 455.16)

§17-1321-5 Appearance by representatives of the provider and the department. (a) In all matters involving an administrative hearing, a provider may choose representation by themselves or by an attorney or other person. A provider shall not have a right to legal counsel appointed at state expense. If the provider is represented by another person, that person's name, address, and telephone number shall be provided to the DHS health care administrator and to the hearing officer prior to the administrative hearing.

(b) Upon receipt of the name of the provider's representative, the health care administrator shall provide to that representative, the name, address, and telephone number of the department's representative. [Eff JUN 29 1992] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: HRS §91-9; 42 C.F.R. §455.13)

§17-1321-6 Forms for papers. An original and two copies of all papers filed in any proceeding under this chapter shall be filed with the department, shall be typewritten on one side only, and be on 8½ by 13 inch white paper. Documents shall bear on the first page the title of the proceeding at the top of the page, together with any administrative or court number assigned to the hearing, and the signatures of the party or the party's representative. [Eff JUN 29 1992] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: HRS §346-14; 42 C.F.R. §431.10)

§17-1321-7 Notice, service, and proof of service. (a) All papers, notices, and other documents shall be served by the party offering them upon all other parties to the proceeding. Proof of service upon the parties shall be filed with the DHS.

(b) Service of process may be accomplished in any manner permitted by law. The department shall serve the provider in person or by mail. If the provider is represented by an attorney or other person, service upon that attorney or other person shall be sufficient.

(c) Proof of service of any document shall be by certificate of attorney, affidavit, or acknowledgment.

(d) Where written notice is required by this chapter, notice shall be considered effective on the date of mailing. [Eff JUN 29 1992] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: HRS §91-9; 42 C.F.R. §455.13)

§17-1321-8 Notice of formal hearing; notice of decision. (a) The department shall notify any provider, who is entitled to an administrative hearing in accordance with section 17-1321-4, of the scheduled date and location of the administrative hearing. Such notice shall be in writing and mailed to the provider no fewer than thirty calendar days before the scheduled date of hearing.

(b) The department shall notify any provider who has received an administrative hearing of the hearing officer's decision by mailing a written copy of the decision within fourteen calendar days of the date of the decision. [Eff JUN 29 1992] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: HRS §§91-9, 91-9.5; 42 C.F.R. §455.13)

§17-1321-9 Conduct of hearing. (a) The hearing shall be conducted by an impartial hearing officer appointed by the DHS director. Prior to conducting the hearing, the hearing officer shall become familiar with sections 84-1 to 84-19, HRS, and the published opinions of the state ethics commission and determine that participation as an administrative hearing officer will create no conflicts of interest or ethical violations.

(b) Testimony shall be taken only on oath or affirmation and such testimony shall be subject to sections 710-1060, 710-1061, and 710-1062, HRS.

(c) Each party may:

- (1) Call and examine witnesses;
- (2) Introduce exhibits into evidence;
- (3) Cross-examine witnesses called by the other party;
- (4) Object to the presentation of any evidence deemed by the party to be not properly admitted;
- (5) Present rebuttal evidence to the opposing party's case-in-chief; and
- (6) Present an opening statement to the hearing officer prior to the taking of evidence, and a closing argument to the hearing officer at the conclusion of the taking of evidence.

(d) The hearing officer shall not require strict adherence to any rules of evidence. The hearing officer shall admit all evidence including, but not limited to, testimony, documents, photographs, opinions, objects, or diagrams, so long as that evidence has any tendency to make the existence of any fact of consequence to the hearing more or less

probable than it would be without the evidence. The hearing officer may, in the hearing officer's discretion, allow the presentation or hearsay evidence, allow cross-examination beyond the scope of direct examination, and allow the party calling a witness to cross-examine or impeach that witness. Rulings on evidence made by the administrative hearing officer shall be in the officer's discretion and not subject to appeal.

(e) The hearing officer may ask questions of any witness or request production of further evidence by any party to the hearing.

(f) The administrative hearing officer shall have discretion to exclude irrelevant, immaterial, or unduly repetitious evidence as provided in section 91-10(1), HRS.

(g) In administrative hearings, the provider shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The amount of proof necessary to prevail shall be a preponderance of the evidence in accordance with section 91-10(5), HRS. [Eff JUN 29 1992] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: HRS §91-10; 42 C.F.R. §455.13)

§17-1321-10 Witnesses and subpoenas. (a) Each party to the administrative hearing shall arrange for the presence of its witnesses at the hearing.

(b) The DHS director hereby designates the hearing officer as a representative of the director, empowered to conduct a hearing. Any party to the administrative hearing may request of the hearing officer a subpoena to compel the attendance of a witness or the production of books, papers, documents, or other objects deemed relevant to the investigation, except that no subpoena shall affect any privilege established by law. Each subpoena shall be signed by the administrative hearing officer who at any point in the proceedings may, on the hearing officer's own motion, subpoena witnesses, books, papers, documents, correspondence, memoranda, or other records in furtherance of the administrative hearing.

(c) Applications for subpoenas for the production by a witness of books, papers, documents, correspondence, memoranda, or other written records, shall be made by affidavit to the hearing officer and shall contain:

(1) The name and address of the person or

organization upon whom the subpoena is to be served;

- (2) A description of the documents, papers, books, correspondence, memoranda, photographs, or other written records that are desired;
- (3) A statement by the affiant that to the best of the affiant's knowledge and belief, the person to be subpoenaed has information about or possesses the documents, papers, books, correspondence, memoranda, photographs, or other objects that the subpoena seeks; and
- (4) The basis for the affiant's belief that the person or organization has information about or possesses the documents, papers, books, correspondence, memoranda, photographs, or other objects that the subpoena seeks.

(d) Each party to the administrative hearing shall arrange for the service of all subpoenas issued on its behalf. A copy of the affidavit in support of the issuance of the subpoena shall be served along with the subpoena.

(e) All witnesses who are summoned to an administrative hearing by subpoena may claim witness fees and mileage allowance at the same rate established for witnesses in the circuit court of the first circuit of the State.

(f) The parties shall bear their own costs. [Eff
JUN 29 1992] (Auth: HRS §346-14; 42 C.F.R.
§431.10) (Imp: HRS §§92-16, 346-13; 42 C.F.R.
§455.13)

§17-1321-11 Amendments. (a) If during the course of the hearing, evidence taken reveals that the provider was involved with conduct which would properly be the basis for suspension, termination, or other administrative sanction, and which was not alleged by the State as grounds for suspension, termination, or other administrative sanction, the State, at the discretion of the hearing officer, may amend its allegations to conform with the evidence.

(b) If, during the course of an administrative hearing, it becomes apparent to either party or to the administrative hearing officer that an absent party should be joined or afforded the opportunity to make an appearance, then the State, at the discretion of the hearing officer, may amend its allegations to include the additional party, or if appropriate, substitute the

additional party for the present provider.

(c) Where allegations are amended pursuant to subsection (a), or parties are added or substituted pursuant to subsection (b), the administrative hearing shall be continued for the length of time the hearing officer deems appropriate to afford any additional party notice and to afford any existing or additional party a chance to address additional allegations.

(d) Notice of amendments or substitutions shall be mailed in writing to the last known address of each party affected by the amendment or substitution.

[Eff JUN 29 1992] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: HRS §346-14; 42 C.F.R. 455.13)

§17-1321-12 Continuances or further hearings. (a)

At any time during the administrative hearing, if the hearing officer determines that the hearing shall be held at another time or at any other locations in the State, the hearing officer, at the hearing officer's discretion or on the motion of any party, may continue the hearing.

(b) If the hearing officer determines at any point in the hearing that it is necessary to seek additional evidence, the hearing officer may continue the hearing to a later date and seek additional evidence, or direct one or both parties to seek further evidence, provided that the hearing officer shall furnish written justification on the record for any continuance under this section lasting in excess of thirty days. Failure of either party to provide additional evidence as directed by the hearing officer shall not be used as the sole basis for an adverse decision against that party on the issues presented at the hearing. In the event that further evidence is not produced as directed, the hearing officer shall proceed to a decision based upon the entirety of the evidence presented at the hearing.

(c) Written notice of the time and place of any continued or additional hearings shall be given in accordance with section 17-1321-7, except that when a continuance or additional hearing to a date certain is ordered during a hearing, then oral notice of the time and place of the hearing shall be sufficient for all parties present at the hearing. [Eff JUN 29 1992] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: HRS §346-14; 42 C.F.R. §455.13)

§17-1321-13 Record of hearing. A verbatim record of all portions of the hearing shall be made. The record may be in the form of a transcript of verbatim shorthand, or by an audio or video recording, provided that in the event any party to the hearing notifies the hearing officer in writing of an intent to file exceptions to the hearing officer's findings of fact as provided in section 91-11, HRS, or if any party appeals an agency decision, as provided in section 91-14, HRS, a verbatim written transcript shall be prepared. [Eff JUN 29 1992] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: HRS §91-9; 42 C.F.R. §455.13)

§17-1321-14 Decision of the hearing officer. (a) At the conclusion of the evidence and arguments by the parties, the hearing officer shall declare the hearing to be closed, at which time each party shall have thirty calendar days, not counting the day that the hearing is closed, to present written proposed findings of fact.

(b) At the conclusion of the thirty day period prescribed in subsection (a), the hearing officer shall have sixty calendar days to prepare a written decision accompanied by separate findings of fact, conclusions of law, and basis for findings. The hearing officer, if clarification of any evidence or any proposed finding of fact is desired, may reconvene the hearing to clarify the existing evidence. The period of time during which the hearing has been reconvened shall toll the time within which the hearing officer is required to prepare the written decision.

(c) The hearing officer shall not have informal, unrecorded conversations with any party concerning the case. All discussions concerning the evidence shall be at sessions of record with all parties to the hearing present except to the extent those discussions are required for the disposition of ex parte matters authorized by law. [Eff JUN 29 1992] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: HRS §§91-12, 91-13; 42 C.F.R. §§455.13, 455.16)

§17-1321-15 Dismissal upon failure to appear at hearings. (a) If, after timely, proper written notice, a provider fails to appear at a scheduled hearing, the hearing officer may issue a written dismissal of the provider's request for an administrative hearing, which shall be mailed to each

party with notice to the provider that the provider may request written consideration.

(b) In order to request written consideration, the provider shall, within ten days of the mailing of written dismissal, appeal to the hearing officer in writing showing good cause for the provider's failure to appear at the hearing. The hearing officer may, in the hearing officer's sound discretion, either sustain the dismissal, or reinstate the hearing with proper written notice to parties. In the event that the hearing officer sustains the dismissal, the hearing officer shall provide a written dismissal order including the circumstances upon which the dismissal is based. [Eff JUN 29 1992] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: HRS §346-14; 42 C.F.R. §§455.13, 455.16)

§17-1321-16 Administrative appeal to the director. (a) In the event of a decision adverse to the provider, a copy of the order and decision shall be served upon all parties pursuant to section 17-1321-7. The provider shall have ten calendar days following the date of mailing of the order and decision to file written exceptions and present written argument to the DHS director.

(b) The director shall have thirty calendar days following the receipt of written exceptions and argument to decide the appeal. The director's decision on the appeal must be based upon the applicable rules and the facts as established in the record, provided that the director may communicate with the hearing officer while deciding the appeal. The director may sustain or reverse the decision and order of the the hearing officer and in either event, shall within thirty calendar days, mail the decision on appeal to all parties. The decision of the hearing officer and any appeal made to the DHS director shall be subject to judicial review as provided in section 91-14, HRS. [Eff JUN 29 1992] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: HRS §346-14; 42 C.F.R. §§455.13, 455.16)

§17-1321-17 to §17-1321-26 (Reserved)